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FAIRBANKS, AK

William J. Journey
Plaintiff, pro se
P.O. Box 72969
Fairbanks, Alaska 99707
Ph: (Ms) (907) 389-2779
E-mail: dogsledteam@hotmail.com

UNITED STATES DISTRICT COURT
IN THE DISTRICT COURT OF ALASKA

WILLIAM J. JOURNEY,)
)
Plaintiff, pro se,)
)
v.)
)
R. JAMES NICHOLSON, in his)
Official Capacity as Secretary)
of Veterans Affairs, 810)
Vermont Avenue, NW,)
Washington, DC 20420, and)
)
UNITED STATES DEPARTMENT OF)
VETERANS AFFAIRS, 810 Vermont)
Avenue, NW, Washington, DC)
20420, and)
)
ALASKA VA HEALTHCARE SYSTEM &)
REGIONAL OFFICE, 2925 DeBarr Rd,)
Anchorage, Alaska 99508,)
)
Defendants.)
)
)

PRIVACY ACT
COMPLAINT

4:07-cv-00016-RRB

COMPLAINT

COMES NOW PLAINTIFF, PRO SE, William J. Journey, and
in support of his Complaint herein allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief and money damages for violation of the Administrative Procedures Act and Privacy Act of 1974.

Plaintiff, pro se, represents himself who has suffered emotional trauma (mental anxiety) and been placed in fear of identity theft, destruction of credit and financial fraud because of Defendants' reckless disregard for the privacy of his personal information.

2. Defendant Nicholson failed to properly perform the duties of his position as Secretary of Veterans Affairs ("Secretary") and did not ensure Plaintiff, pro se, privacy rights were protected from the intentional, willful, arbitrary and capricious actions and inactions of his subordinates (defendant, Alaska VA Healthcare System & Regional Office).

3. Defendant United States Department of Veterans Affairs ("Department" or "VA") flagrantly disregarded the privacy rights of Plaintiff, pro se; and their "opportunity," pursuant to Administrative Procedures and Privacy Acts, to correct their (separate) violations of

Plaintiff, pro se, privacy rights, and bringing themselves back into compliance with Administrative Procedures and Privacy Acts (for [about] 2,189 days). Because Plaintiff, pro se, was uninformed of VA'S security breaches of his privacy, until his traveling Board of Veterans Appeals hearing, at Alaska VA Healthcare System & Regional Office, May 16, 2007, the defendants were the only parties who had knowledge about the breaches and they were the only parties who had the ability to "fix" or "correct" or "remedy" these privacy act security breaches of Plaintiff, pro se, personal information (as mandated by VA's own rules, regulations, statutes and laws; and Administrative Procedures Act and Privacy Act). And, defendants' intentionally and willfully chose not to follow the laws, repeatedly.

4. Defendant VA arrogantly compounded its disregard for Plaintiff, pro se, privacy rights by recklessly failing to make even the most rudimentary effort to "notify" or "inform" Plaintiff, pro se, about their missing hard drive, to date; containing Plaintiff, pro se, private personal information, name, social security number, VA case file number, ratings, disabilities, medical information, etc., maintained by Alaska VA Healthcare System & Regional

Office, Veterans Benefits Adjudication.

Thus, the identifiable information was encrypted, easily copied, and apparently available to anyone aware of its existence. VA's failure, despite repeated calls for correction of these long-standing, fundamental security deficiencies, allowed Plaintiff, pro se, private information to be surreptitiously disclosed to unknown individuals for unknown reasons.

5. The result of Defendants' reckless disregard of Plaintiff, pro se, privacy rights was the unauthorized disclosure of his name, social security number, VA case file number, ratings, disabilities, medical information, etc..

5. Defendants' actions and inactions have inflicted, and will long continue to inflict, real costs and emotional pain (mental anxiety) and suffering on Plaintiff, pro se.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1331 because this is a civil action arising under the laws of the United States. Jurisdiction is also invoked pursuant to 5 U.S.C. secs. 552a(g)(1), (5) because this is a civil action to enforce a liability created under

5 U.S.C. sec. 552a after 1975.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. sec. 1391 because a substantial part of the events or omissions giving rise to the claims occurred in the District Court of Alaska.

PARTIES

9. Plaintiff, pro se, is a citizen of the United States of American, and resident of the State of Alaska. Also, Plaintiff, pro se, is a disabled Vietnam veteran receiving service connected disability compensation.

DEFENDANTS

10. Defendant R. James Nicholson is the Secretary of Veterans Affairs and is the official responsible for the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department.

11. Defendant VA is an executive department of the federal government and is, therefore an "agency" for the purposes of the Privacy Act of 1974.

12. Defendant Alaska VA Healthcare System & Regional

Office is "subordinate" to VA.

STATEMENT OF THE CASE

12. On or about, April 26, 2000, a PC (Personal Computer) and back-up hard drive permanently crashed and all deferred rating prior to July 1, 1999, were lost and missing. The PC and data storage device or devices contained a copy of a collection or grouping of information pertaining to Plaintiff, pro se (and other veterans). The Personal Information contained individual identifying information including, but not limited to, Plaintiff, pro se, name, social security number, VA case file number, ratings, disabilities, medical information.

Specification:

Beginning, on or about, April 26, 2000, and all separate dates in-between, until end date: May 22, 2006 (about 2,189 days later), Defendant United States Department of Veterans Affairs, intentionally and willfully violated, their own rules, regulations and policies, including the Administrative Procedures Act and Privacy Act, by flagrantly disregarding the privacy rights of Plaintiff, pro se; and their opportunity, pursuant to

Administrative Procedures Act and Privacy Act, to correct their violations of Plaintiff, pro se, privacy rights, by some type of notification and offered remedy; bringing themselves back into compliance with those Acts, and their own rules, policies, and regulations. Defendant United States Department of Veterans Affairs, on same date, and all dates in-between until end date, knowingly and arrogantly, chose to compound their violations, each and every other date from beginning date to end date, of Plaintiff, pro se, privacy rights; by intentionally and willfully choosing not to be compliant, with the Administrative Procedures Act and Privacy Act, and their own rules, policies and regulations. Consequently, defendant not offer Plaintiff, pro se, any remedy for his adverse effects, caused by their violations of his privacy rights. Because Plaintiff, pro se, was totally unaware and uninformed about their violations, because of their own choosing, until May 22, 2007, he was unable, and denied, the opportunity to help "sort this matter out" to an amicable resolution between defendant and himself. It is impossible for defendant to go back into time, between April 26, 2000 to May 22, 2006, to correct this incident and remedy the adverse effects suffered by Plaintiff, pro se; except for defendant paying the amount

of damages requested by Plaintiff, pro se. Because, on May 3, 2006, defendant lost 26.5 million veterans personal information, consequently, violating 26.5 million veterans privacy rights, including Plaintiff, pro se, which they concealed, until 19 days later; when they gave their notice about their violations, nationally. On or about, March 13, 2007, defendants, again, lost 1.8 million veterans and doctors personal information, which included Plaintiff, pro se; consequently, violating Plaintiff, pro se, and 1.8 million veterans and doctors privacy rights, which they partially remedied, on or about, April 30, 2007.

It is not "Right," and totally contrary to law, and not fair play and not an equal-setting, between parties, to allow the protection of the law to defendant when defendant chooses not to take the opportunity presented by the Acts to correct themselves, and remedy their violations with Plaintiff, pro se. Consequently, forsaking all adverse effects presented to Plaintiff, pro se, because of defendant's violations of Plaintiff, pro se, privacy rights; and defendant further chooses to forsake, and not to follow, and continue to violate, the law, repeatedly; that they created.

(All persons have a duty to exercise reasonable care not to subject others to an unreasonable risk of harm. See Walls v. Oxford Management Co., 137 N.H. 653, 656 (1993). Whether a defendant's conduct creates a risk of harm to others sufficiently foreseeable to charge the defendant with a duty to avoid such conduct is a question of law, Iannelli v. Burger King Corp., 145 N.H. 190, 193 (2000), because "the existence of a duty does not arise solely from the relationship between the parties, but also from the need for protection against reasonably foreseeable harm." Hungerford v. Jones, 143 N.H. 208, 211 (1998) (quotation omitted)).

13. The incident "adversely effected" the normal and fair adjudication of Plaintiff, pro se, disability claim for service connection for heart conditions, secondary to nicotine dependency; and consequently, defendant denied his claim for disability rating of 100%, total and permanent, for service connection for heart conditions, secondary to nicotine dependency, effective June 9, 1993. Veteran suffered lost compensation at 100% compensable rate between June 9, 1993 to December 1, 1994; approximate "actual damages" \$36,000.00; and medical malpractice.

14. VA officials never reported to the proper authority the event of PC back-up hard drive missing, containing all "deferred" ratings prior to July 1, 1999. These VA officials were aware of the egregious and unlawful disclosure of Plaintiff, pro se, Personal Information soon after the occurrence, yet these VA Officials willfully and intentionally decided to conceal the disclosure and did not report the incident to other VA officials, federal law enforcement, or notify, or inform, Plaintiff, pro se, whose Personal Information had been disclosed without authorization. These failures exhibit Defendants' reckless disregard for Plaintiff, pro se, privacy rights, intentional and willful violations of the Privacy Act, and were otherwise not in accordance with law; nor with their own rules and regulations.

15. No VA official charged with protecting the Personal Information pursuant to the Privacy Act and who was knowledgeable of the egregious and unauthorized disclosure informed Defendant VA's Inspector General of the disclosure, to date. The respective daily security breaches of Plaintiff, pro se, Personal Information occurred, beginning, on April 26, 2000 and ending May 26, 2006. When Defendant Nicholson publicly

informed Plaintiff, pro se (and other veterans) about VA'S egregious and patently unlawful disclosure of Plaintiff, pro se (and other veterans) Personal Information, on May 22, 2006. Defendant Nicholson's *post hoc* public statements involved a separate incident that occurred on May 3, 2006 (19 days before Defendant Nicholson public statements) where 26.5 million veterans Personal Information were missing. Plaintiff, pro se, is included into the 26.5 million veterans missing Personal Information incident, Defendant lost, dated: May 3, 2006. Consequently, and even though Defendants' are unaware, because Alaska VA Healthcare System & Regional Office officials failed to report to their "superiors" their security breaches of Plaintiff, pro se, Personal Information, their security breaches have been remedied 2,189 days later (or about 6 years later) because of a separate incident remedied by Defendant Nicholson.

17. Again, and for the third time, on March 13, 2007, Plaintiff, pro se, was notified by Director of the Veterans Integrated Service Network 7 in Atlanta, Georgia, that a portable computer hard drive, containing his Personal Information, used by an employee of the Birmingham VA Medical Center is missing. (About 1.8 million veterans and

doctors Personal Information missing.) "If VA determines that your (Plaintiff, pro se) information or you are at risk as a result of this incident, VA will contact you (Plaintiff, pro se) to offer a credit monitoring service to you (Plaintiff, pro se) at no cost to you (Plaintiff, pro se)..."

18. On April 30, 2007, Defendant contacted Plaintiff, pro se, about #18, substantially stating: "...We believe certain personal information about you (Plaintiff, pro se), such as name, social security number, date of birth, and health information may have been stored on the hard drive. As a result of this incident, your (Plaintiff, pro se) personal information may be compromised. We sincerely apologize for any inconvenience this may have caused, and we believe it is important to inform you (Plaintiff, pro se) of any risk of harm and corrective actions that can be taken in response to this incident..." "To protect you from any misuse of your personal information, VA has contracted with a company at our own expense to provide you with free credit protection services..."

19. Defendants' actions and inactions in failing to report, after April 26, 2000 and before May 22, 2006, the unauthorized disclosure of Plaintiff, pro se,

Personal Information, by Alaska VA Healthcare System & Regional Office, were arbitrary, capricious and without observance of procedures required by law.

20. Defendant VA has been repeatedly informed of recurring, systemic, and fundamental deficiencies in its information security, but failed to effectively respond. VA's own Inspector General has for years criticized the Department for lax information security. Despite the repeated identification problems, VA has been unable or unwilling to properly secure the personal information under their control. These repeated failures to correct known vulnerabilities of VA's safeguards for Plaintiff, pro se, private information demonstrates a reckless disregard for privacy rights and intentional or willful violations of the Privacy Act. Defendant has no excuse, or justification, about knowing about their vulnerabilities to safeguard Plaintiff, pro se (and other veterans), Personal Information.

21. The Personal Information disclosed about April 26, 2000, could be retrieved by Plaintiff, pro se, name or by some identifying number, symbol, or other identifying particular to an individual.

21. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by not obtaining prior written consent of Plaintiff, pro se, before disclosing the Personal Information to any other individual or government agency.

22. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by failing to observe the procedures required by law for disclosure of private information, including Personal Information, without the prior written consent of Plaintiff, pro se.

23. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by disclosing, or allowed disclosure of, the Personal Information to officials and employees who did not have a need for such records and information in the performance of their duties.

24. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by failing to keep or maintain an accurate accounting of the disclosures Personal Information.

25. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects assembling and maintaining the Personal Information in a system of records although the information was not relevant and necessary to accomplish a purpose required by statute or by executive order of President.

26. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by failing to collect his Personal Information directly from the subject individuals to the greatest extend practicable although the information may result in adverse determinations about Plaintiff, pro se, rights, benefits, and privileges under a Federal program.

27. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effect by failing to publish a notice of the existence and character of the Personal Information system records in the Federal Register.

29. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by failing to make reasonable efforts to assure that Personal Information records were accurate, complete, timely and

relevant for VA purposes prior to disseminating a record about an individual to any person other than an agency.

30. VA flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse affects by failing to establish or implement appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against anticipated threats or hazards to the records security or integrity, which could result in substantial harm, embarrassment, inconvenience, or unfairness to Plaintiff, pro se on whom information was maintained. VA's security deficiencies allowed, and continue to allow, a single individual to compromise through disclosure Plaintiff, pro se, Personal Information. VA's entrenched unwillingness or inability to establish and maintain adequate information security is an abuse of discretion and an intentional and willful disregard and failure to observe procedures required by law.

31. Defendant Nicholson was ultimately responsible for control, direction and management of VA's processes, policies, and procedures for compliance with the Privacy Act of 1974, including, but not limited to VA Handbook 6300.5, "Procedures for Establishing and Managing Privacy

Act Systems of Records, "but failed to ensure those processes, policies and procedures were adequately implemented by his subordinates. Defendant Nicholson knew, or should have known, that VA had long-standing information security deficiencies that threatened Plaintiff, pro se, privacy rights, but did not ensure correction or mitigation of those deficiencies.

32. Defendant Nicholson flagrantly disregarded Plaintiff, pro se, privacy and caused Plaintiff, pro se, adverse effects by failing to establish and ensure lawful compliance by his subordinates with appropriate, administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against anticipated threats or hazards to the records security or integrity, which could result in substantial harm, embarrassment, inconvenience, or unfairness to Plaintiff, pro se, on whom information was maintained.

33. Each of Defendants' failures complained of caused Plaintiff, pro se adverse effects including, but not limited to, embarrassment, inconvenience, unfairness, mental distress, emotional trauma, personal injuries,

pecuniary damages and the threat of past, current and future substantial harm from identity theft.

33. The real threat of identity theft and similar adverse effects of VA's illegal actions and inactions Privacy Act violations requires affirmative actions by Plaintiff, pro se, to recover some semblance of normalcy and peace of mind, emotional stability, and personal security including, but not limited to, frequently obtaining and reviewing credit reports, bank statements, and other similar information, obtaining credit watch services, and closing financial accounts. Plaintiff, pro se, has, and will continue to, suffer tangible and intangible damages for the foreseeable future.

35. Defendant VA flagrant disregard of their opportunity, pursuant to the Administrative Procedures and Privacy Act, to correct and remedy their privacy violations of Plaintiff, pro, se, Personal Information adversely affects Plaintiff, pro se, by unnecessarily placing him at constant risk of identity theft and credit card fraud; and each day thereafter from the date of illegal disclosure of Plaintiff, pro se, Personal Information is a separate violation of the Administrative Procedures and Privacy Acts. Department VA is concealment of their privacy

violations of Plaintiff, pro se, Personal Information from Plaintiff, pro se, Plaintiff, pro se, cannot do anything, unless he is notified and informed and offered a remedy by Defendant VA. The Administrative Procedures and Privacy Acts, other statutes, President, US. Congress, and Courts will not be party to illegal conduct and suppositious behavior by Defendant VA flagrant disregard of the law to adversely effect Plaintiff, pro se, privacy.

FIRST CLAIM FOR RELIEF

Violation of the Administrative Procedures Act

36. Plaintiff, pro se, reassert his allegations set forth in Paragraphs (1) through (35), including Attachments, above and incorporates them by reference into this First Claim of Relief.

37. Defendant VA possesses personal information of Plaintiff, pro se (and millions of other veterans and citizens). VA has repeatedly demonstrated an inability or unwillingness to implement, or callous disregard for, fundamental procedures to provide minimally acceptable safeguards for the personal and private information in its possession.

38. Defendant Nicholson is ultimately responsible in his official capacity for safeguarding Plaintiff, pro se (and citizen's) private information under VA control pursuant to applicable laws, including the Privacy Act of 1974 and the Administrative Procedures Act, but has been unable or unwilling to require compliance with those laws.

39. Defendants' actions and inactions in failing to safeguard Plaintiff, pro se, private information were arbitrary, capricious, and otherwise not in accordance with law.

40. Plaintiff, pro se, suffered, and continues to suffer, harm as a result of Defendants' actions and from actions improperly withheld or unreasonably delayed.

41. Plaintiff, pro se, is entitled to equitable relief for Defendants' violation of Plaintiff, pro se, rights pursuant to the Administrative Procedures Act.

SECOND CLAIM FOR RELIEF

Violation of the Privacy Act

42. Plaintiff, pro se, reasserts his allegations set forth in Paragraphs (1) through (41), including

Attachments, above and incorporates them by reference into this Second Claim for Relief.

43. Defendants violated the Privacy Act of 1974.

44. Each of Defendants' violations of the Privacy Act was intentional or willful.

45. Each Defendants' Privacy Act violations caused Plaintiff, pro se adverse effects.

46. Defendants' unauthorized disclosure of Plaintiff, pro se, private information (name, address, and phone numbers) linked to his Social Security number has, in particular, placed Plaintiff, pro se, in legitimate fear of identity theft, corruption of his credit files, and plundering of bank accounts and benefits, compensation and pension funds.

47. Plaintiff, pro se, suffered actual damages as a result of Defendants' Privacy Act violations.

48. Plaintiff, pro se, is entitled to monetary relief and the cost of this action together with reasonable attorney fees.

49. Plaintiff, pro se, believes Journey v. United

States of America, Case No. 4:06-cv-00034-RRB, filed in the United States District Court for the District of Alaska, and Case No. 2:07-cv-00310-IPJ (U.S. Dist. Ctr, Northern Dist. Of Alabama Southern Division are pendent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, pro se, pray as follows:

- (a) That this Court issue a declaratory judgment that Defendants violated, and continued to violate, Plaintiff, pro se, rights under the Administrative Procedures Act and Privacy Act of 1974; 2,189 times (each) (and between April 26, 2000 to May 22, 2006);
- (b) That this Court order the 2,189 Privacy Act violations, by defendant, are separate violations of Plaintiff, pro se, privacy rights (because defendant knowingly, intentionally, and willfully violated the existing procedures and laws to correct, and remedy, their violations of Plaintiff, pro se, Personal Information, which defendant arrogantly chose not to obey and follow those procedures and

laws; and continue to conceal and hide their mistake from Plaintiff, pro se, and their superiors);

- (c) That this Court order Defendant Nicholson to immediately identify in the Federal Register the existence and character of every system of records maintained by VA and make available to any individual therein, their authorized representatives, or survivors, each record maintained in any VA system of records pertaining to that individual, including Plaintiff, pro se;
- (d) That this Court order Defendant Nicholson to immediately identify in the Federal Register each use of every system of records, including any use of that system or individual records thereof known as a "project" or "projects," and the explicit statutory or other legal basis for that use or project;
- (e) That this Court permanently enjoin Department VA, its officers, agents, employees, and those acting for and with them, from accessing, viewing, handling, disclosing, or in any way transferring any record or system of records

subject to Privacy Act requirements until an independent panel of experts finds that adequate information security has been established and implemented by VA, unless such activity is explicitly allowed by Court order and under supervision of persons independent of VA, such supervision to be at VA expense;

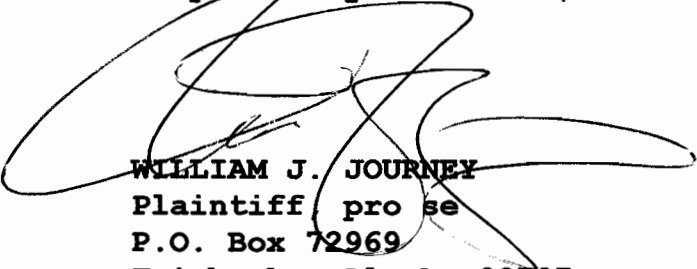
(f) That this Court enjoin Defendant VA, its officers, agents, employees, and those acting for and with them from removing any device capable of storing, containing, or transferring any record or system of records, including, but not limited to, laptop computers, portable hard drives, memory stick or similar devices, and "iPods" and similar devices, from property under VA's supervision and control until and unless VA demonstrates that adequate information security has been established to the Court's satisfaction;

(g) That this Court grant Plaintiff, pro se, Judgment against Defendant VA for damages in an amount of \$1,000.00 x 2,189 (violations) = \$2,189,000.00 (as a minimum) and/or, not less than \$30,000,000.00;

- (h) That this Court grant Plaintiff, pro se, his costs and reasonable attorney fees; and
- (i) That this Court grant such additional relief as the Court deems proper and just.

Respectfully submitted,

7/3/2007



WILLIAM J. JOURNEY
Plaintiff pro se
P.O. Box 72969
Fairbanks, Alaska 99707
Ms: (907) 389-2779
E-mail: dogsledteam@hotmail.com